

IN THE COURT OF APPEALS  
STATE OF ARIZONA  
DIVISION TWO

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NOV -7 2007

COURT OF APPEALS  
DIVISION TWO

JAMES L.,	)	
	)	
Appellant,	)	2 CA-JV 2007-0033
	)	DEPARTMENT B
v.	)	
	)	<u>MEMORANDUM DECISION</u>
	)	Not for Publication
CARRIE K. and KAYLENA C.,	)	Rule 28, Rules of Civil
	)	Appellate Procedure
Appellees.	)	
	)	

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APPEAL FROM THE SUPERIOR COURT OF PIMA COUNTY

Cause No. 179368

Honorable Jane L. Eikleberry, Judge

AFFIRMED

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The Law Firm of Frederick Lomayesva  
By Frederick Lomayesva

Tucson  
Attorney for Appellant

Benavidez Law Group, P.C.  
By Jennifer Manzi

Tucson  
Attorneys for Appellee Carrie K.

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V Á S Q U E Z, Judge.

¶1 Appellant James L. is the biological father of Kaylena C., who was born in February 2000. Kaylena's mother, Carrie K., initiated this private severance action in

September 2006, seeking to have James's parental rights terminated so Carrie's husband could adopt Kaylena. James appeals from the juvenile court's order entered on April 27, 2007, terminating his parental rights on the ground of abandonment pursuant to A.R.S. § 8-533(B)(1). James complains the court erred by denying, on the eve of the contested severance hearing, his third request for a change of appointed counsel and his third motion for a change of judge.

¶2 James and Carrie never married, and James had never legally established paternity of Kaylena. Kaylena had lived exclusively with her mother since birth, and she was seven years old when the contested severance hearing began. She does not know James and considers Carrie's husband, Wayne K., to be her father. Carrie testified that James had seen Kaylena only twice in seven years, both times before she was a year old. He had never paid child support or given Kaylena a single gift before Carrie filed her petition to terminate his rights in September 2006. Except for the two times he saw Kaylena when she was still an infant, James had had no contact or communication with her at all.

¶3 James was personally served with Carrie's petition in mid-October 2006. At an initial severance hearing in early December, the juvenile court appointed counsel to represent him. Less than two months later, at James's request, his first attorney filed a motion to withdraw from the representation. The juvenile court (Judge Chandler) granted the motion and appointed a different lawyer for James on January 29, 2007. Less than one month elapsed before the second lawyer moved to withdraw, citing "[i]rreconcilable

differences . . . concerning the preparation and defense of [the] case” and James’s “demand[] that counsel terminate his representation.” A different judge, Judge Chon-Lopez, granted James’s second lawyer’s request to withdraw. On March 2, the court appointed a third attorney to represent James, admonishing James there would be no further changes of appointed counsel.

¶4 To give James’s new lawyer time to prepare for trial, the juvenile court at a status hearing in mid-March vacated the late-March and early-April dates previously set for the contested severance hearing and rescheduled the hearing to begin on April 25, 2007. Earlier, in January, despite being represented by counsel, James had filed his first, pro se motion for change of judge, alleging a conflict of interest between himself and Judge Chandler. Judge Chandler had recused herself for different reasons than those James had alleged, and the case was reassigned in February to Judge Chon-Lopez. In March, James repeated the process, filing a second, pro se “notice of conflict of interest” and motion for change of judge. Judge Chon-Lopez signed an order on April 4 reassigning the case to Judge Eikleberry.

¶5 At a status hearing on April 13, Judge Eikleberry confirmed April 25 as the first day of the severance hearing and scheduled additional time for the hearing on three subsequent dates. Six days later, on April 19, James’s third lawyer, Jacqueline Rohr, filed a motion to withdraw. The reasons she cited for seeking to withdraw were that James had requested it, that he and counsel did not agree “on the carriage of the case,” and that

“[c]ounsel can not pursue the avenue requested by [James].” The juvenile court held a hearing on April 23 and denied the motion. In its minute entry, the court stated:

The Court notes that Mr. L[.] has had a number of court appointed attorneys in this case, each one having filed a motion to withdraw. Appointing yet another lawyer would, in all likelihood, result in another motion to withdraw. The trial is scheduled to start [on April 25] and appointing new counsel would necessitate a trial continuance which is unfair to the parties and the witnesses. Ms. Rohr is an experienced attorney who can provide good representation to Mr. L[.]

¶6 In reaction to that ruling, the following day James filed his third motion for a change of judge, this one claiming that Judge Eikleberry, too, had a conflict of interest as evidenced by her refusal to grant Rohr’s motion to withdraw. As the contested severance hearing began on April 25, the court received a copy of the motion for change of judge and promptly denied it. James stated aloud that he refused to have Jacqueline Rohr represent him, and the court reiterated its refusal to appoint a fourth lawyer for him. James ultimately left the courtroom before any witnesses were called. As he departed, he replied, “Whatever,” when Judge Eikleberry told him that, if he left, the trial could proceed in his absence and result in the termination of his parental rights.

¶7 On appeal from the resulting order severing his parental rights to Kaylena, James contends it was “reversible error” for the juvenile court to deny his third round of tandem requests for new counsel and a new judge. We review both types of rulings for an abuse of the juvenile court’s discretion. *See generally State v. Lee*, 142 Ariz. 210, 220, 689 P.2d 153, 163 (1984) (decision whether to permit counsel in criminal case to withdraw rests

in trial court's discretion); *Smith v. Mitchell*, 214 Ariz. 78, ¶ 5, 148 P.3d 1151, 1153 (App. 2006) (in civil cases, denial of peremptory change of judge reviewed for abuse of discretion). James has directed us to nothing in the record establishing that the juvenile court abused its discretion here, particularly in light of its having recently granted motions by two prior counsel to withdraw and two previous requests by James for a change of judge.

¶8           Elaborating on its ruling after James had left the courtroom at the beginning of the severance hearing, the juvenile court stated:

The Court has refused the motion to withdraw previously on the grounds stated on the record. Mr. L[.] has had three attorneys in this case, the case is not quite eight months old, each attorney has filed a motion to withdraw after a short period of time, and the Court is of the opinion that if new counsel were appointed, new counsel would be confronted with the same conflicts with Mr. L[.] that previous counsel have. If the Court granted the motion for appointment of new counsel, that would necessitate a postponement of this trial[,] which is unfair.

Given Mr. L[.]'s proclivity to request a change of counsel, given the fact that he has been provided with a quality experienced counsel, and the Court has denied that motion, the Court will go forward on a default basis.

The court then reiterated its denial of James's attendant, third motion for a change of judge, which—like the previous two such motions—rested solely on James's perception that the court's having ruled against him on any issue reflected bias or a “conflict of interest.”

¶9           Following James's departure, Carrie testified as the only witness at the hearing. The juvenile court then found that James had left the courtroom voluntarily and thus chosen not to attend the severance hearing. The court further found that the statutory ground of

abandonment under § 8-533(B)(1) had been proven and that terminating James's parental rights was in Kaylena's best interest. *See generally* A.R.S. §§ 8-537, 8-533(B); Ariz. R. P. Juv. Ct. 66(C). James has not challenged those findings on appeal.

¶10 James has not demonstrated that the juvenile court was biased against him or had a conflict of interest. We are therefore unable to say the court abused its discretion in refusing to allow his third lawyer to withdraw two days before the previously postponed severance hearing or in denying James's latest motion for change of judge in which he sought to have the case reassigned for the fourth time.

¶11 Affirmed.

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GARYE L. VÁSQUEZ, Judge

CONCURRING:

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PETER J. ECKERSTROM, Presiding Judge

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PHILIP G. ESPINOSA, Judge